

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA**

IN THE MATTER OF	)	Case No. BK 17-____-TLS
	)	
EAT FIT GOT HEALTHY FOODS, LLC et al <sup>1</sup>	)	Chapter 11
	)	
Debtors.	)	

**OMNIBUS MOTION TO REJECT UN-EXECUTORY CONTRACTS**

COMES NOW Eat Fit Go Healthy Foods, LLC at al., debtors and debtors-in-possession in the above captioned Chapter 11 bankruptcy case ("Debtors"), pursuant to 11 U.S.C. § 365 and Fed R. Bank. P. 6006, and in support of this Omnibus Motion to Reject Executory Contracts (the "Motion"), states and alleges as follows:

**Procedural Background**

1. On July 31, 2018 (the "Petition Date") Debtors filed 10 separate voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court (the "Related Cases") in the United States Bankruptcy Court for the District of Nebraska (the "Bankruptcy Court").
2. Each Debtor remains in possession of its assets and continues to operate as debtor-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108.
3. An Official Committee of Unsecured Creditors has not yet been appointed in any of the Related Cases.
4. This is a core proceeding pursuant to 28 U.S.C. §157(2)(A).
5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334.
6. Venue is proper in this Court pursuant to 28 U.S.C. §1408.

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<sup>1</sup> The Debtors in this case include: Eat Fit Go Omaha Kitchen, LLC, Eat Fit Go Kansas City Kitchen, LLC, Eat Fit Go Georgia Kitchen, LLC, Eat Fit Go Arizona Kitchen, LLC, Eat Fit Go Healthy Foods - Des Moines, LLC, Eat Fit Go Healthy Foods - Kansas City, LLC, EFG Shared Services, LLC (No Rev), Eat Fit Go Healthy Foods - Omaha, LLC, and Eat Fit Go Healthy Foods - Minnesota, LLC.

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### **Debtors' Background**

7. It is estimated that the United States spends \$190.2 billion each year on obesity-related medical costs, with \$14 billion of that on childhood obesity alone. Obesity-related illnesses cause an estimated 300,000 deaths each year, making obesity the 2nd biggest killer behind tobacco. More, decades have been spent on the development and manufacture of processed foods (engineered to make food last longer and stretch further). Founded in 2015, Debtors aimed to revolutionize the way Americans think about and acquire food by providing chef-made meals that are made fresh daily, never frozen, high in protein, and allergy-friendly.

8. Distinct from the large meal kit delivery companies, Debtors business operations offer a one stop shopping where a customer can purchase breakfast, lunch, dinner, and snacks that are pre-cooked, pre-portioned, ready-to-eat meals. Capitalizing on a growing trend in healthy foods, Debtors opened its first store in February of 2016, in Omaha, NE, and has grown to 33 stores across eight states utilizing a mix of franchised locations and corporate owned stores.

9. Beyond the rapidly increasing number of storefronts, Debtors have plans to expand into eCommerce with a delivery and a health and wellness mobile app with the goal of delivering healthy foods to customers' doors within 24 hours.

### **Relation of Debtors**

10. Each of the Debtors is a legally separately entity. With the exception of Eat Fit Go Healthy Foods – Omaha, LLC, each of the other Debtors (the "Subsidiaries") is a wholly-owned subsidiary of Eat Fit Go Healthy Foods, (the "Parent").<sup>2</sup> Each of the Subsidiaries and the Parent is an integral part of Debtors' ongoing operations, be it as a manger of operations, corporate

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<sup>2</sup> Eat Fit Go Healthy Foods, LLC is the managing member of Eat Fit Go Healthy Foods – Omaha, LLC.

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stores, corporate kitchens, leaseholders, and the like. In addition, Debtors utilize common branding for their operations.

**Relief Requested**

11. As part of its ordinary course operations, Debtors have entered into a number of a contracts and franchising agreements. Debtors have identified certain executory contracts that require immediate rejection due to the financial burdens they place on Debtors' operations. A list of these executory contracts is attached hereto as Exhibit "A" (the "Contracts").

12. Sound business justifications exist for the immediate rejection of the Contracts.

13. As part of its pre-bankruptcy efforts to restructure outside of these proceedings, Debtors undertook extensive steps to identify underperforming operations that acted, in effect, as a capital drain on Debtors' overall business operations. Through this process, Debtors have identified 12 Contracts that require immediate rejection. Of these Contracts:

- i. Three are franchise agreements with EFGroupATL, LLC. As noted in Debtors' *Omnibus Motion to Reject Unexpired Leases*, Debtors have determined that it is in its best interests of their operations and their estates to close all operations in Georgia. The operations to date are not profitable. In fact, it is Debtors' understanding and belief that the operational losses at the corporate owned kitchen in Atlanta, which Debtors are currently forced to cover, is in excess of \$30,000.00+ a month. Debtors can simply no longer afford this loss. In addition, EFGroupATL, LLC has no known plans to open additional stores in the future and have in fact threatened to sue Debtors for rescission of its contracts with Debtors and for damages;
- ii. One is a franchise agreement with EFGP, LLC, which formerly operated a location in St. Joseph, Missouri. The St. Joseph location has been shuttered by the franchisee and the same is in breach of the franchise agreement.
- iii. One is a franchise agreement with E Fit G Kearney, LLC, which formerly operated a location in Kearney, Nebraska. The Kearney location has been shuttered by the franchisee and the same is in breach of the franchise agreement
- iv. One is an area development agreement ("ADA") with EFGroupATL, LLC.

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- v. Six are other ADA's with a variety of franchisees in multiple states. As part of its pre-bankruptcy efforts to restructure, Debtors have determined that it will be exiting the franchise business. While current franchise locations will remain open at this time, Debtors will not be investing additional and future resources in to operating as a franchisor and can no longer afford to provide franchise services to franchise locations.

14. Continuing to operate as a franchisor would require Debtors to expend resources complying with a myriad of financial, legal, and regulatory obligations associated with the business operations of a franchisor. Moreover, the counterparties to the Contracts may be allowed to continue opening new locations and utilizing Debtors' intellectual properties, which can lead to damage of the Debtors brands. As a result, Debtors have determined that exiting the franchise business is in the best interests of their operations and of their estates.

15. Pursuant to 11 U.S.C. § 365(a), Debtors may, subject to the Court's approval, reject any executory contract or unexpired lease to which Debtors are a party.

16. In deciding whether to grant Debtors' Motion, the Court should note that the business judgment rule applies to "the rejection of an executory contract under § 365 of the Bankruptcy Code...[and] under the business judgment standard, the question is whether the termination of the [contract or lease] is in the debtors' best economic interests, based on the Debtors' best business judgment in the circumstances. This standard is satisfied when a debtor shows that the action to be taken will benefit the estate." *In re Farmland Industries, Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003). Moreover, and while the counter parties to the Contracts may argue that the potential harms that might befall them from the rejection of the Contracts, taking into account the harm of counterparties runs contrary to the business judgement rule. *See In re Noranda Aluminum, Inc.*, 549 B.R. 725, 729 (Bankr. E.D. Mo. 2016) ("To the extent that any of the cases cited by Sherwin require a consideration of the interests of counterparties in the

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application of the business judgment rule, I disagree with them. *See In re Sabine Oil & Gas Corp.*, 547 B.R. 66, 71 (Bankr.S.D.N.Y.2016) ("Unless a separate provision of the Bankruptcy Code provides a non-debtor party with specific protection, the interests of the debtor and its estate are paramount; adverse effects on the non-debtor contract party arising from the decision to assume or reject are irrelevant." *Id.*).

17. Based on the reasons stated herein, Debtors have determined, in their reasonable business judgment, that the rejection of the Contracts, effective as of the date hereof, will benefit the estate through avoidance of costs associated with assumption of the Leases and the avoidance of future obligations under the Contracts.

**COMPLIANCE WITH FED. R. BANK. P. 6006(f)**

18. THIS IS AN OMNIBUS MOTION AND IS RELATED TO MULTIPLE EXECUTORY CONTRACTS. IF YOU ARE RECEIVING THIS MOTION IT IS BECAUSE A CONTRACT BETWEEN YOU AND THE DEBTORS MAY BE AFFECTED HEREBY. YOU ARE ENCOURAGED AND DIRECTED TO LOCATE YOUR NAME / RELEVANT INFORMATION ON EXHIBIT "A" ATTACHED HERETO, WHICH IS ORGANIZED ALPHABETICALLY BY NAME OF THE APPLICABLE LESSOR.

19. The Debtors are not seeking permission to assume the Contracts at this time.

20. The Debtors are not seeking permission to assign the Contracts at this time.

**WAIVER OF THE FOURTEEN-DAY STAY IN FED. R. BANKR. P. 6006**

21. Finally, and for the reasons stated herein, Debtors submit there is sufficient justification for a waiver of the fourteen-day stay of an order approving this Motion. If the Contracts are not rejected as soon as possible there exists the possibility of increased

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administrative expense costs, increased claims, and a decrease in Debtors' cash. Accordingly, cause exists to waive the fourteen-day stay under Fed. R. Bankr. P. 6006.

WHEREFORE, Debtors respectfully pray that this Court enter an Order granting this Motion in full, approving and authorizing the rejection of the Leases effective as of the date hereof, and granting any other relief at equity or law this Court deems necessary.

Respectfully submitted this 2<sup>nd</sup> day of August, 2018.

**EAT FIT GOT HEALTHY FOODS, LLC,  
Debtor**

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**EXHIBIT A – CONTRACTS**

Documents Name	Debtors	Counter Party	Date
Area Development Agreement	Eat Fit Go Healthy Foods, LLC	Chadron EFGAZ L.L.C - Tucson	28-Aug-17
Franchise Agreement	Eat Fit Go Healthy Foods, LLC	E FIT G KRNLY, L.L.C. - Kearney, NE	7-Jul-16
Franchise Agreement	Eat Fit Go Healthy Foods, LLC	EFGP LLC - St. Joe, MO	25-Jul-16
Franchise Agreement	Eat Fit Go Healthy Foods, LLC	EFGGroupATL, LLC - 2980 Cobb Pkwy	5-Dec-17
Franchise Agreement	Eat Fit Go Healthy Foods, LLC	EFGGroupATL, LLC - 5530 Windward Pkwy	5-Dec-17
Franchise Agreement	Eat Fit Go Healthy Foods, LLC	EFGGroupATL, LLC - 5840 Roswell Rd	5-Dec-17
Area Development Agreement	Eat Fit Go Healthy Foods, LLC	EFGGroupATL, LLC - Various GA counties	1-Sep-16
Area Development Agreement	Eat Fit Go Healthy Foods, LLC	Hamilton Heights - Colorado Springs	5-Sep-17
Area Development Agreement	Eat Fit Go Healthy Foods, LLC	Husker Power - Columbia, O'Fallon,	TBD
Area Development Agreement	Eat Fit Go Healthy Foods, LLC	OmaStings, LLC - Maricopa and Pinal AZ	1-Jun-16
Area Development Agreement	Eat Fit Go Healthy Foods, LLC	RK FITFOODS, INC. - Denver	29-Aug-17
Area Development Agreement	Eat Fit Go Healthy Foods, LLC	TELLthefuture, LLC - Springfield, Manhattan KS	6-Sep-16